

(Added Pub. L. 89-574, §8(c)(1), Sept. 13, 1966, 80 Stat. 768; amended Pub. L. 91-605, title I, §134(a), Dec. 31, 1970, 84 Stat. 1733; Pub. L. 97-424, title I, §118, Jan. 6, 1983, 96 Stat. 2110; Pub. L. 105-178, title I, §§1103(l)(3)(B), 1212(a)(2)(A)(i), June 9, 1998, 112 Stat. 126, 193; Pub. L. 109-59, title I, §1921, Aug. 10, 2005, 119 Stat. 1480.)

AMENDMENTS

2005—Subsec. (a). Pub. L. 109-59 substituted “on a Federal-aid highway” for “on the Federal-aid urban system”.

1998—Subsec. (b)(3). Pub. L. 105-178, §1212(a)(2)(A)(i), substituted “State transportation department” for “State highway department”.

Subsec. (f)(1). Pub. L. 105-178, §1103(l)(3)(B), substituted “section 104(b)(4)” for “section 104(b)(5)(B) of this title”.

1983—Subsec. (f). Pub. L. 97-424 added subsec. (f).

1970—Pub. L. 91-605 substituted “Fringe and corridor parking facilities” for “Limitation on authorization of appropriations for certain purposes” in section catchline.

Subsec. (a). Pub. L. 91-605 substituted provisions permitting the Secretary to approve construction of publicly owned parking facilities under the Federal-aid urban system for provisions limiting authorization of appropriations under section 131, 136, and 319(b) of this title, or any highway safety bill enacted after May 1, 1966 by preventing these sections and provisions from being construed as authority for any appropriations not specifically authorized in these sections and provisions.

Subsec. (b). Pub. L. 91-605 substituted provisions preventing project approval by the Secretary unless the State or political subdivision thereof where the project is located can construct, maintain, and operate the facility, unless the Secretary has entered into an agreement with the State or political subdivision governing the financing, maintenance, and operation of the facility, and unless the Secretary has approved design standards for construction of the facility for provisions limiting authorization of appropriations under sections 131, 136, and 319(b) of this title, or any highway safety bill enacted after May 1, 1966 by preventing appropriations to carry out these sections and provisions unless they are specific as to the amount authorized and as to the fiscal year.

Subsec. (c). Pub. L. 91-605 substituted provisions defining “parking facilities” for provisions limiting authorization of appropriations under sections 131, 136, and 319(b) of this title, or any highway safety bill enacted after May 1, 1966 by preventing the highway trust fund from being a source of appropriation for these sections and provisions in an amount exceeding the tax imposed by section 4061(a)(2) of Title 26, if such tax was imposed at a rate of 1% plus additional amounts appropriated from the general fund to the highway trust fund for such purposes except that the total of all appropriations made from such fund to carry out these sections and provisions shall never exceed the total of all appropriations made to such fund based on the imposition of such tax plus additional amounts appropriated from the general fund to the highway trust fund for such purposes.

Subsecs. (d), (e). Pub. L. 91-605 added subsecs. (d) and (e).

TRUCK PARKING FACILITIES

Pub. L. 109-59, title I, §1305, Aug. 10, 2005, 119 Stat. 1214, provided that:

“(a) ESTABLISHMENT.—In cooperation with appropriate State, regional, and local governments, the Secretary [of Transportation] shall establish a pilot program to address the shortage of long-term parking for commercial motor vehicles on the National Highway System.

“(b) ALLOCATION OF FUNDS.—

“(1) IN GENERAL.—The Secretary [of Transportation] shall allocate funds made available to carry out this section among States, metropolitan planning organizations, and local governments.

“(2) APPLICATIONS.—To be eligible for an allocation under this section, a State (as defined in section 101(a) of title 23, United States Code), metropolitan planning organization, or local government shall submit to the Secretary an application at such time and containing such information as the Secretary may require.

“(3) ELIGIBLE PROJECTS.—Funds allocated under this subsection shall be used by the recipient for projects described in an application approved by the Secretary. Such projects shall serve the National Highway System and may include the following:

“(A) Constructing safety rest areas (as defined in section 120(c) of title 23, United States Code) that include parking for commercial motor vehicles.

“(B) Constructing commercial motor vehicle parking facilities adjacent to commercial truck stops and travel plazas.

“(C) Opening existing facilities to commercial motor vehicle parking, including inspection and weigh stations and park-and-ride facilities.

“(D) Promoting the availability of publicly or privately provided commercial motor vehicle parking on the National Highway System using intelligent transportation systems and other means.

“(E) Constructing turnouts along the National Highway System for commercial motor vehicles.

“(F) Making capital improvements to public commercial motor vehicle parking facilities currently closed on a seasonal basis to allow the facilities to remain open year-round.

“(G) Improving the geometric design of interchanges on the National Highway System to improve access to commercial motor vehicle parking facilities.

“(4) PRIORITY.—In allocating funds made available to carry out this section, the Secretary shall give priority to applicants that—

“(A) demonstrate a severe shortage of commercial motor vehicle parking capacity in the corridor to be addressed;

“(B) have consulted with affected State and local governments, community groups, private providers of commercial motor vehicle parking, and motorist and trucking organizations; and

“(C) demonstrate that their proposed projects are likely to have positive effects on highway safety, traffic congestion, or air quality.

“(c) REPORT TO CONGRESS.—Not later than 3 years after the date of enactment of this Act [Aug. 10, 2005], the Secretary [of Transportation] shall submit to Congress a report on the results of the pilot program.

“(d) FUNDING.—

“(1) IN GENERAL.—There is authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) to carry out this section \$6,250,000 for each of fiscal years 2006 through 2009.

“(2) CONTRACT AUTHORITY.—Funds authorized under this subsection shall be available for obligation in the same manner as if the funds were apportioned under chapter 1 of title 23, United States Code; except that such funds shall not be transferable and shall remain available until expended, and the Federal share of the cost of a project under this section shall be determined in accordance with sections 120(b) and 120(c) of such title.

“(e) TREATMENT OF PROJECTS.—Notwithstanding any other provision of law, projects funded under this section shall be treated as projects on a Federal-aid system under chapter 1 of title 23, United States Code.”

§ 138. Preservation of parklands

(a) DECLARATION OF POLICY.—It is declared to be the national policy that special effort should be made to preserve the natural beauty of the

countryside and public park and recreation lands, wildlife and waterfowl refuges, and historic sites. The Secretary of Transportation shall cooperate and consult with the Secretaries of the Interior, Housing and Urban Development, and Agriculture, and with the States in developing transportation plans and programs that include measures to maintain or enhance the natural beauty of the lands traversed. After the effective date of the Federal-Aid Highway Act of 1968, the Secretary shall not approve any program or project (other than any project for a park road or parkway under section 204 of this title) which requires the use of any publicly owned land from a public park, recreation area, or wildlife and waterfowl refuge of national, State, or local significance as determined by the Federal, State, or local officials having jurisdiction thereof, or any land from an historic site of national, State, or local significance as so determined by such officials unless (1) there is no feasible and prudent alternative to the use of such land, and (2) such program includes all possible planning to minimize harm to such park, recreational area, wildlife and waterfowl refuge, or historic site resulting from such use. In carrying out the national policy declared in this section the Secretary, in cooperation with the Secretary of the Interior and appropriate State and local officials, is authorized to conduct studies as to the most feasible Federal-aid routes for the movement of motor vehicular traffic through or around national parks so as to best serve the needs of the traveling public while preserving the natural beauty of these areas.

(b) DE MINIMIS IMPACTS.—

(1) REQUIREMENTS.—

(A) REQUIREMENTS FOR HISTORIC SITES.—The requirements of this section shall be considered to be satisfied with respect to an area described in paragraph (2) if the Secretary determines, in accordance with this subsection, that a transportation program or project will have a de minimis impact on the area.

(B) REQUIREMENTS FOR PARKS, RECREATION AREAS, AND WILDLIFE OR WATERFOWL REFUGES.—The requirements of subsection (a)(1) shall be considered to be satisfied with respect to an area described in paragraph (3) if the Secretary determines, in accordance with this subsection, that a transportation program or project will have a de minimis impact on the area. The requirements of subsection (a)(2) with respect to an area described in paragraph (3) shall not include an alternatives analysis.

(C) CRITERIA.—In making any determination under this subsection, the Secretary shall consider to be part of a transportation program or project any avoidance, minimization, mitigation, or enhancement measures that are required to be implemented as a condition of approval of the transportation program or project.

(2) HISTORIC SITES.—With respect to historic sites, the Secretary may make a finding of de minimis impact only if—

(A) the Secretary has determined, in accordance with the consultation process required under section 106 of the National Historic Preservation Act (16 U.S.C. 470f), that—

(i) the transportation program or project will have no adverse effect on the historic site; or

(ii) there will be no historic properties affected by the transportation program or project;

(B) the finding of the Secretary has received written concurrence from the applicable State historic preservation officer or tribal historic preservation officer (and from the Advisory Council on Historic Preservation if the Council is participating in the consultation process); and

(C) the finding of the Secretary has been developed in consultation with parties consulting as part of the process referred to in subparagraph (A).

(3) PARKS, RECREATION AREAS, AND WILDLIFE OR WATERFOWL REFUGES.—With respect to parks, recreation areas, or wildlife or waterfowl refuges, the Secretary may make a finding of de minimis impact only if—

(A) the Secretary has determined, after public notice and opportunity for public review and comment, that the transportation program or project will not adversely affect the activities, features, and attributes of the park, recreation area, or wildlife or waterfowl refuge eligible for protection under this section; and

(B) the finding of the Secretary has received concurrence from the officials with jurisdiction over the park, recreation area, or wildlife or waterfowl refuge.

(Added Pub. L. 89-574, §15(a), Sept. 13, 1966, 80 Stat. 771; amended Pub. L. 90-495, §18(a), Aug. 23, 1968, 82 Stat. 823; Pub. L. 94-280, title I, §124, May 5, 1976, 90 Stat. 440; Pub. L. 100-17, title I, §133(b)(10), Apr. 2, 1987, 101 Stat. 171; Pub. L. 109-59, title VI, §6009(a)(1), Aug. 10, 2005, 119 Stat. 1874.)

REFERENCES IN TEXT

For the effective date of the Federal-Aid Highway Act of 1968, referred to in subsec. (a), see section 37 of Pub. L. 90-495, as amended, set out as an Effective Date of 1968 Amendment note under section 101 of this title.

AMENDMENTS

2005—Pub. L. 109-59, §6009(a)(1)(A), which directed substitution of “(a) DECLARATION OF POLICY.—It is” for “it is hereby”, was executed by making the substitution for “It is hereby” to reflect the probable intent of Congress.

Subsec. (b). Pub. L. 109-59, §6009(a)(1)(B), added subsec. (b).

1987—Pub. L. 100-17 inserted “(other than any project for a park road or parkway under section 204 of this title)” before “which requires” in third sentence.

1976—Pub. L. 94-280 authorized the Secretary, in cooperation with the Secretary of the Interior and appropriate State and local officials, to conduct studies as to the most feasible Federal-aid routes for the movement of motor vehicular traffic through or around national parks so as to best serve the needs of the traveling public while preserving the natural beauty of these areas.

1968—Pub. L. 90-495 amended section generally so as to render it identical to section 1653(f) of Title 49, Transportation, governing all programs and projects subject to the jurisdiction of the Secretary of Transportation.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-495 effective Aug. 23, 1968, see section 37 of Pub. L. 90-495, set out as a note under section 101 of this title.

CLARIFICATION OF EXISTING STANDARDS

Pub. L. 109-59, title VI, §6009(b), Aug. 10, 2005, 119 Stat. 1876, provided that:

“(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act [Aug. 10, 2005], the Secretary [of Transportation] shall (in consultation with affected agencies and interested parties) promulgate regulations that clarify the factors to be considered and the standards to be applied in determining the prudence and feasibility of alternatives under section 138 of title 23 and section 303 of title 49, United States Code.

“(2) REQUIREMENTS.—The regulations—

“(A) shall clarify the application of the legal standards to a variety of different types of transportation programs and projects depending on the circumstances of each case; and

“(B) may include, as appropriate, examples to facilitate clear and consistent interpretation by agency decisionmakers.”

STUDY OF TRANSIT NEEDS IN NATIONAL PARKS AND RELATED PUBLIC LANDS

Pub. L. 105-178, title III, §3039, June 9, 1998, 112 Stat. 393, as amended by Pub. L. 105-206, title IX, §9009(y), July 22, 1998, 112 Stat. 862, provided that:

“(a) PURPOSES.—The purposes of this section are to encourage and promote the development of transportation systems for the betterment of the national parks and other units of the National Park System, national wildlife refuges, recreational areas, and other public lands in order to conserve natural, historical, and cultural resources and prevent adverse impact, relieve congestion, minimize transportation fuel consumption, reduce pollution (including noise and visual pollution), and enhance visitor mobility and accessibility and the visitor experience.

“(b) STUDY.—

“(1) IN GENERAL.—The Secretary, in coordination with the Secretary of the Interior, shall undertake a comprehensive study of alternative transportation needs in national parks and related public lands managed by Federal land management agencies [to] assist in carrying out the purposes described in subsection (a). The study shall be submitted to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate not later than January 1, 2000.

“(2) STUDY ELEMENTS.—The study required by paragraph (1) shall—

“(A) identify transportation strategies that improve the management of the national parks and related public lands;

“(B) identify national parks and related public lands with existing and potential problems of adverse impact, high congestion, and pollution, or which can benefit from alternative transportation modes;

“(C) assess the feasibility of alternative transportation modes; and

“(D) identify and estimate the costs of alternative transportation modes for each of the national parks and related public lands referred to in paragraph (1).

“(3) DEFINITION.—For purposes of this subsection, the term ‘Federal land management agencies’ means the National Park Service, the United States Fish and Wildlife Service, and the Bureau of Land Management.”

STUDY OF ALTERNATIVE TRANSPORTATION MODES IN NATIONAL PARK SYSTEM

Pub. L. 102-240, title I, §1050, Dec. 18, 1991, 105 Stat. 2000, provided that:

“(a) IN GENERAL.—Not later than 12 months after the date of the enactment of this Act [Dec. 18, 1991], the Secretary, in consultation with the Secretary of the Interior, shall conduct and transmit to Congress a study of alternative transportation modes for use in the National Park System. In conducting such study, the Secretary shall consider (1) the economic and technical feasibility, environmental effects, projected costs and benefits as compared to the costs and benefits of existing transportation systems, and general suitability of transportation modes that would provide efficient and environmentally sound ingress to and egress from National Park lands; and (2) methods to obtain private capital for the construction of such transportation modes and related infrastructure.

“(b) FUNDING.—From sums authorized to be appropriated for park roads and parkways for fiscal year 1992, \$300,000 shall be available to carry out this section.”

§ 139. Efficient environmental reviews for project decisionmaking

(a) DEFINITIONS.—In this section, the following definitions apply:

(1) AGENCY.—The term “agency” means any agency, department, or other unit of Federal, State, local, or Indian tribal government.

(2) ENVIRONMENTAL IMPACT STATEMENT.—The term “environmental impact statement” means the detailed statement of environmental impacts required to be prepared under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(3) ENVIRONMENTAL REVIEW PROCESS.—

(A) IN GENERAL.—The term “environmental review process” means the process for preparing for a project an environmental impact statement, environmental assessment, categorical exclusion, or other document prepared under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(B) INCLUSIONS.—The term “environmental review process” includes the process for and completion of any environmental permit, approval, review, or study required for a project under any Federal law other than the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(4) LEAD AGENCY.—The term “lead agency” means the Department of Transportation and, if applicable, any State or local governmental entity serving as a joint lead agency pursuant to this section.

(5) MULTIMODAL PROJECT.—The term “multimodal project” means a project funded, in whole or in part, under this title or chapter 53 of title 49 and involving the participation of more than one Department of Transportation administration or agency.

(6) PROJECT.—The term “project” means any highway project, public transportation capital project, or multimodal project that requires the approval of the Secretary.

(7) PROJECT SPONSOR.—The term “project sponsor” means the agency or other entity, including any private or public-private entity, that seeks approval of the Secretary for a project.

(8) STATE TRANSPORTATION DEPARTMENT.—The term “State transportation department” means any statewide agency of a State with